

## ARKANSAS ARK. CODE

### Title 5. Criminal Offenses

#### Chapter 73. Weapons

##### Subchapter 1. Possession and Use Generally

**5-73-101. Definitions.** As used in this chapter, unless the context otherwise requires:

(1) **"Instrument of crime"** means anything manifestly designed, made, adapted, or commonly used for criminal purposes.

(2) **"Minor"** means any person under eighteen (18) years of age.

(3) **"Violent felony conviction"** means a conviction for any felony offense against the person codified in Title 5, Chapters 10 through 14, Arkansas Code, or any other offense containing as an element of the offense one of the following;

(A) The use of physical force;

(B) The use or threatened use of serious physical force;

(C) The infliction of physical harm; or

(D) The creation of a substantial risk of serious physical harm.

**5-73-102. Possessing instrument of crime.**

(a) A person commits the offense of possessing an instrument of crime if he possesses any instrument of crime with a purpose to employ it criminally.

(b) Possessing an instrument of crime is a Class A misdemeanor.

**5-73-103. Possession of firearms by certain persons.**

(a) Except as provided in subsection (d) of this section or unless authorized by and subject to such conditions as prescribed by the Governor, or his designee, or the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department, or other bureau or office designated by the Treasury Department, no person shall possess or own any firearm who has been:

(1) Convicted of a felony; or

(2) Adjudicated mentally ill; or

(3) Committed involuntarily to any mental institution.

(b) A determination by a jury or a court that a person committed a felony:

(1) Shall constitute a conviction for purposes of subsection (a) of this section even though the court suspended imposition of sentence or placed the defendant on probation;

**[Publisher's Note:** In the 1995 Ark. Acts 595, this subsection read – "(1) Shall constitute a conviction for purposes of subsection (a) of this section even though the court suspended imposition of sentence or placed the defendant on probation or execution of sentence or had conviction expunged or was entitled to have conviction expunged;". The 1995 Ark. Acts 1325 was subsequently enacted and did not include the italicized language. Notwithstanding the Arkansas Attorney General has taken the position that this language should still be given effect.]  
but

(2) Shall not constitute a conviction for purposes of subsection (a) of this section if the person is subsequently granted a pardon explicitly restoring the ability to possess a firearm.

(c)(1) A person who violates this section commits a Class B felony if:

(i) The person has a prior violent felony conviction; or

(ii) The current possession of a firearm involves the commission of another crime; or

(iii) The person has been previously convicted under § 5-73-103 or a similar provision from another jurisdiction.

(2) A person who violates this section commits a Class D felony if the person has been previously convicted of a felony and the person's present conduct or the prior felony conviction does not fall within subdivision (c)(1) of this section.

(3) Otherwise, the person commits a Class A misdemeanor.

(d) The Governor shall have authority, without granting a pardon, to restore the right of a convicted felon or an adjudicated delinquent to own and possess a firearm upon the recommendation of the chief law enforcement officer in the jurisdiction in which the person resides, so long as the underlying felony or delinquency adjudication:

(1) Did not involve the use of a weapon; and

(2) Occurred more than eight (8) years ago.

**5-73-104. Criminal use of prohibited weapons.**

(a) A person commits the offense of criminal use of prohibited weapons if, except as authorized by law, he uses, possesses, makes, repairs, sells, or otherwise deals in any bomb, machine gun, sawed-off shotgun or rifle, firearm specially made or specially adapted for silent discharge, metal knuckles, or other implement for the infliction of serious physical injury or death which serves no common lawful purpose.

(b) It is a defense to prosecution under this section that:

(1) The person was a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of his duty at the time he used or possessed the prohibited weapon; or

(2) The defendant used, possessed, made, repaired, sold, or otherwise dealt in any of the above enumerated articles under circumstances negating any likelihood that the weapon could be used unlawfully.

(c) Criminal use of prohibited weapons is a Class B felony if the weapon is a bomb, machine gun, or firearm specially made or specially adapted for silent discharge. Otherwise, it is a Class D felony.

**5-73-105. Legitimate manufacture, repair, and transportation of prohibited weapons.** Section 5-73-104 shall not be construed to prohibit the manufacture, repair, transportation, or sale of the weapons enumerated therein to or for authorized representatives of the armed forces or to or for the authorized representatives of any law enforcement agency.

**5-73-106. Defacing a firearm.**

(a) A person commits the offense of defacing a firearm when he knowingly removes, defaces, mars, covers, alters, or destroys the manufacturer's serial number or identification mark of a firearm.

(b) Defacing a firearm is a Class D felony.

**5-73-107. Possession of a defaced firearm.**

(a) A person commits the offense of possession of a defaced firearm if he knowingly possesses a firearm with a manufacturer's serial

number or other identification mark required by law which has been removed, defaced, marred, altered, or destroyed.

(b) It is a defense to a prosecution under this section that the person reported such possession to the police or other governmental agency prior to arrest or the issuance of an arrest warrant or summons.

(c)(1) Possession of a defaced firearm is a Class D felony.

(2) If the manufacturer's serial number or other identification mark required by law is merely covered or obstructed, but still retrievable, then possession of a defaced firearm is a Class A misdemeanor.

**5-73-108. Criminal possession of explosives.**

(a) A person commits the offense of criminal possession of explosives when he sells, possesses, manufactures, or transports an explosive substance or incendiary device:

(1) If he has the purpose of using that substance or device to commit an offense; or

(2) If he knows or should know that some other person intends to use that substance or device to commit an offense.

(b) Criminal possession of explosives is a Class B felony.

**5-73-109. Furnishing a deadly weapon to a minor.**

(a) A person commits the offense of furnishing a deadly weapon to a minor when he sells, barter, leases, gives, rents, or otherwise furnishes a firearm or other deadly weapon to a minor without the consent of a parent, guardian, or other person responsible for general supervision of his welfare.

(b) Furnishing a deadly weapon to a minor is a Class A misdemeanor, unless the deadly weapon is:

(1) A handgun;

(2) A sawed-off or short-barreled shotgun, as defined in § 5-1-102(21);

(3) A sawed-off or short-barreled rifle, as defined in § 5-1-102(22);

(4) A firearm that has been specially made or specially adapted for silent discharge;

(5) A machine gun;

(6) An explosive or incendiary device, as defined in § 5-71-301;

(7) Metal knuckles;

(8) A defaced firearm, as defined in § 5-73-107; or

(9) Other implement for the infliction of serious physical injury or death that serves no common lawful purpose, in which case it is a Class B felony.

**5-73-119. Handguns - Possession by minor or possession on school property.**

(a)(1)(A) No person in this state under the age of eighteen (18) years shall possess a handgun.

(B)(i) A violation of subdivision (a)(1)(A) of this section shall be a Class A misdemeanor.

(ii) A violation of subdivision (a)(1)(A) of this section shall be a Class D felony if the person has previously:

(a) Been adjudicated delinquent for a violation of subdivision (a)(1)(A) of this section; or

(b) Been adjudicated delinquent for any offense which would be a felony if committed by an adult; or

(c) Pleaded guilty or nolo contendere to, or been found guilty of, a felony in circuit court while under the age of eighteen (18) years.

**(2)(A)** No person in this state shall possess a firearm:

(i) Upon the developed property of the public or private schools, K-12; or

(ii) In or upon any school bus; or

(iii) At a designated bus stop as identified on the route lists published by school districts each year.

**(B)** A violation of subdivision (a)(2)(A) of this section shall be a Class D felony, and no sentence imposed for violation thereof shall be suspended or probated or treated as a first offense under § 16-93-301 et seq.

**(3)(A)** No person in this state shall possess a handgun upon the property of any private institution of higher education or the publicly supported institutions of higher education in this state on or about his person, in a vehicle occupied by him, or otherwise readily available for use with a purpose to employ it as a weapon against a person.

**(B)** A violation of subdivision (a)(3)(A) of this section shall be a Class D felony.

**(b)** A "handgun" is a firearm, capable of firing rimfire ammunition or centerfire ammunition, which is designed or constructed to be fired with one (1) hand.

**(c)** It is a defense to prosecution under this section that at the time of the act of possessing a handgun or firearm:

(1) The person is in his own dwelling or place of business or on property in which he has a possessory or proprietary interest; or

(2) The person is a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of his official duties; or

(3) The person is assisting a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of his official duties pursuant to the direction or request of the law enforcement officer, prison guard, or member of the armed forces; or

(4) The person is a licensed security guard acting in the course and scope of his duties; or

(5) The person is hunting game with a handgun or firearm which may be hunted with a handgun or firearm under the rules and regulations of the Arkansas State Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun or firearm; or

(6) The person is a certified law enforcement officer; or

(7) The person is on a journey, unless the person is eighteen (18) years old or less; or

(8) The person is participating in a certified hunting safety course sponsored by the Arkansas State Game and Fish Commission or a firearm safety course recognized and approved by the Arkansas State Game and Fish Commission or by a state or national nonprofit organization qualified and experienced in firearm safety; or

(9) The person is participating in a school-approved educational course or sporting activity involving the use of firearms; or

(10) The person is a minor engaged in lawful marksmanship competition or practice or other lawful recreational shooting under the supervision of his parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis, or is traveling to or from this activity with an unloaded handgun or firearm accompanied by his parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis.

#### **5-73-120. Carrying a weapon.**

**(a)** A person commits the offense of carrying a weapon if he possesses a handgun, knife, or club on or about his person, in a vehicle occupied by him, or otherwise readily available for use with a purpose to employ it as a weapon against a person.

**(b)** As used in this section, unless the context otherwise requires:

**(1) "Handgun"** means any firearm with a barrel length of less than twelve inches (12") that is designed, made, or adapted to be fired with one (1) hand;

**(2) "Knife"** means any bladed hand instrument that is capable of inflicting serious physical injury or death by cutting or stabbing. It includes a dirk, sword or spear in a cane, razor, ice pick, and a throwing star, switchblade, and butterfly knife; and

**(3) "Club"** means any instrument that is specially designed, made, or adapted for the purpose of inflicting serious physical injury or death by striking, including a blackjack, billie, and sap.

**(c)** It is a defense to a prosecution under this section that at the time of the act of carrying:

(1) The person is in his own dwelling, place of business, or on property in which he has a possessory or proprietary interest; or

(2) The person is a law enforcement officer, prison guard, or member of the armed forces, acting in the course and scope of his official duties; or

(3) The person is assisting a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of official duties pursuant to the direction or request of the law enforcement officer, prison guard, or member of the armed forces; or

(4) The person is carrying a weapon when upon a journey; or

(5) The person is a licensed security guard acting in the course and scope of his duties; or

(6) The person is hunting game with a handgun which may be hunted with a handgun under rules and regulations of the Arkansas State Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun; or

(7) The person is a certified law enforcement officer; or

(8) The person is in a motor vehicle, and the person has a license to carry a concealed weapon pursuant to § 5-73-301 et seq.

**(d)(1)** Any person who carries a weapon into an establishment that sells alcoholic beverages shall be deemed guilty of a misdemeanor and subject to a fine of not more than two thousand five hundred dollars (\$2,500) or imprisonment for not more than one (1) year, or both.

**(2)** Otherwise, carrying a weapon is a Class A misdemeanor.

#### **5-73-125. Interstate sale and purchase of shotguns, rifles, and ammunition.**

**(a)** The sale of shotguns and rifles and ammunition in this state to residents of adjacent states is authorized pursuant to regulations issued by the Secretary of the Treasury under the Federal Gun Control Act of 1968 as the act is in effect on March 4, 1969.

**(b)** A resident of this state shall be permitted to purchase a rifle, shotgun, or ammunition in an adjacent state as expressly authorized pursuant to the regulations issued under the Federal Gun Control Act of 1968 as the act is in effect on March 4, 1969.

#### **5-73-128. Offenses upon property of public schools.**

**(a)(1)** Whenever a person who is less than nineteen (19) years of age at the time of the commission of the offense pleads guilty or nolo

contendere, and the plea is accepted by the court, or is found guilty of any criminal offense under section 5-73-101 et seq. or section 5-73-201 et seq., provided that the state proves that the offense was committed upon the property of the public schools or in or upon any school bus, or is found by a juvenile court to have committed such an offense, the court shall prepare and transmit to the Department of Finance and Administration within twenty-four (24) hours after the plea or finding an order of denial of driving privileges for the person.

**(2)** In cases of extreme and unusual hardship, the order may provide for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

**(b)** Upon receipt of an order of denial of driving privileges under this section, the Department of Finance and Administration shall suspend the motor vehicle operator's license of the person for not less than twelve (12) months nor more than thirty-six (36) months.

**(c)** Penalties prescribed herein shall be in addition to all other penalties prescribed by law for the offenses covered by this section.

#### **5-73-129. Furnishing a handgun or a prohibited weapon to a felon.**

**(a)** A person commits the offense of furnishing a handgun to a felon if he sells, barter, leases, gives, rents, or otherwise furnishes a handgun to a person who he knows has been found guilty of, or who has pleaded guilty or nolo contendere to, a felony.

**(b)** A person commits the offense of furnishing a prohibited weapon to a felon if he sells, barter, leases, gives, rents, or otherwise furnishes:

**(1)** A sawed-off shotgun or rifle;

**(2)** A firearm that has been specially made or specially adapted for silent discharge;

**(3)** A machine gun;

**(4)** A bomb;

**(5)** Metal knuckles;

**(6)** A defaced firearm, as defined in § 5-73-107; or

**(7)** Other implement for the infliction of serious physical injury or death that serves no common lawful purpose,

to a person who has been found guilty of, or who has pleaded guilty or nolo contendere to, a felony.

**(c)** Furnishing a handgun or a prohibited weapon to a felon is a Class B felony.

#### **5-73-132. Sale, rental, or transfer of firearm to person prohibited from possessing firearms.**

**(a)** A person shall not sell, rent, or transfer a firearm to any person who he knows is prohibited by state or federal law from possessing the firearm.

**(b)(1)** Violation of this section is a Class A misdemeanor, unless the firearm is:

**(A)** A handgun;

**(B)** A sawed-off or short-barrelled shotgun, as defined in § 5-1-102(21);

**(C)** A sawed-off or short-barrelled rifle, as defined in § 5-1-102(22);

**(D)** A firearm that has been specially made or specially adapted for silent discharge;

**(E)** A machine gun;

**(F)** An explosive or incendiary device, as defined in § 5-71-301(2);

**(G)** A defaced firearm, as defined in § 5-73-107; or

**(H)** Other implement for the infliction of serious physical injury or death that serves no common lawful purpose.

(2) If the firearm is listed in subdivision (b)(1) of this section, a violation of this section is a Class B felony.

## Subchapter 2. Uniform Machinegun Act

**5-73-201. Title.** This subchapter may be cited as the "Uniform Machine Gun Act."

**5-73-202. Definitions.** As used in this subchapter, unless the context otherwise requires:

(1) **"Machine gun"** means a weapon of any description by whatever name known, loaded or unloaded, from which more than five (5) shots or bullets may be rapidly, or automatically, or semi-automatically, discharged from a magazine, by a single function of the firing device;

(2) **"Crime of violence"** means any of the following crimes or an attempt to commit any of them: Murder, manslaughter, kidnapping, rape, mayhem, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering, and larceny;

(3) **"Person"** includes firm, partnership, association, or corporation.

**5-73-203. Uniformity of interpretation.** This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**5-73-204. Possession or use for offensive or aggressive purposes unlawful.** Possession or use of a machine gun for offensive or aggressive purpose is declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than ten (10) years.

**5-73-205. Presumption of offensive or aggressive purpose.** Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or

(2) When in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(3) When the machine gun is of the kind described in § 5-73-209 and has not been registered as in said section required; or

(4) When empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

**5-73-206. Evidence of possession or use.** The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

**5-73-207. Manufacture for military, nonaggressive, or nonoffensive use.** Nothing contained in this subchapter shall prohibit or interfere with:

(1) The manufacture for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose;

(2) The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) The possession of a machine gun other than one adapted to use pistol cartridges of 30

(.30 in. or 7.63 mm.) or larger caliber, for a purpose manifestly not aggressive or offensive.

## 5-73-208. Registration by manufacturers.

(a) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(b) This register shall show:

(1) The model and serial number, date of manufacture, sale, loan, gift, delivery, or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered, or from whom it was received;

(2) The purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered, or from whom received.

(c) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection.

(d) A violation of any provision of this section shall be punishable by a fine of not less than . . . [sic] hundred dollars.

**5-73-210. Search warrants.** Warrant to search any house or place and seize any machine gun adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber possessed in violation of this subchapter may issue in the same manner and under the same restrictions as provided by law for stolen property, and any court of record upon application of the prosecuting attorney shall have jurisdiction and power to order any machine gun, thus or otherwise legally seized, to be confiscated and either destroyed or delivered to a peace officer of the state or a political subdivision thereof.

## Subchapter 3. Concealed Handguns

**5-73-301. Definitions.** As used in this subchapter:

(1) **"Director"** means the Director of the Department of Arkansas State Police;

(2) **"Handgun"** means any firearm, other than a fully loaded automatic firearm, with a barrel length of less than twelve inches (12") that is designed, made, or adapted to be fired with one (1) hand;

(3) **"Concealed"** means to cover from observation so as to prevent public view; and [sic].

## 5-73-302. Authority to issue license.

(a) The director is authorized to issue licenses to carry concealed handguns to persons qualified as provided in this subchapter.

(b) Such licenses shall be valid throughout the state for a period of four (4) years from the date of issuance.

(c) Licenses issued to former elected or appointed sheriffs of any county of this State shall be renewed every four (4) years and shall be revocable on the same grounds as other permits and they must meet the same qualifications as all other applicants. However, the former elected or appointed sheriffs shall be exempt from the fee prescribed by 5-73-311(a)(3) and from the training requirements of 5-73-309(11) for issuance.

## 5-73-304. Exemptions.

(a)(1) Certified law enforcement officers, chiefs of police, and sheriffs shall be exempt from the licensing requirements of this subchapter, if otherwise authorized to carry a concealed

(2) Solely for purposes of this subchapter, an auxiliary law enforcement officer certified by the Arkansas Commission on Law Enforcement Standards and Training and approved by the

sheriff of the county shall be deemed to be a certified law enforcement officer.

(b) Auxiliary law enforcement officers shall be exempt from the licensing requirements of this subchapter when:

(1) They have completed the minimum training requirements and are certified as an auxiliary law enforcement officer in accordance with the Commission on Law Enforcement Standards; and

(2) Specifically authorized in writing by their chiefs of police or sheriffs.

(c) The authorization prescribed in (b)(2) of this section shall be carried on their persons and be produced upon demand at the request of any law enforcement officer or owner or operator of any of the prohibited places as set out in § 5-73-306.

## 5-73-315. Possession of license - Identification of licensee.

(a) Any person possessing a valid license issued pursuant to this subchapter may carry a concealed handgun.

(b) The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a concealed handgun and must display both the license and proper identification upon demand by a law enforcement officer.

**5-73-317. Rules and regulations.** The director is authorized to promulgate rules and regulations to permit the efficient administration of this subchapter.

## Subchapter 4. Concealed Handgun License Reciprocity

**5-73-401. Recognition of other states' permits - Acts 1997, No. 789.** Any person in possession of a valid license issued by another state to carry a concealed handgun shall be entitled to the privileges and subject to the restrictions prescribed by Arkansas' concealed handgun law (§ 5-73-301 et seq.) provided that the concealed handgun law of the state that issued the license is at least as restrictive as Arkansas' concealed handgun law and that the state that issued the license recognizes concealed handgun licenses issued under § 5-73-301 et seq. The Director of the Department of State Police shall make a determination as to which states' permits will be recognized in Arkansas and provide that list to every law enforcement agency within the state. The director shall revise the list from time to time and provide the revised list to every law enforcement agency in this state.

**5-73-402. Recognition of other states' permits - Acts 1997, No. 1239.** Any person in possession of a valid license issued by another state to carry a concealed handgun shall be entitled to the privileges and subject to the restrictions prescribed by Arkansas' concealed handgun law (§ 5-73-301 et seq.) provided that the state that issued the license recognizes concealed handgun licenses issued § 5-73-301 et seq. The Director of the Department of State Police shall make a determination as to which states' permits will be recognized in Arkansas and provide that list to every law enforcement agency within the state. The director shall revise the list from time to time and provide the revised list to every law enforcement agency in this state.

## Title 14. Local Government

### Chapter 16. Powers of Counties Generally

**14-16-504. Regulation by local unit of government.**

(a) As used in this section, "local unit of government" means a city, town, or county.

(b)(1)(A) A local unit of government shall not enact any ordinance or regulation pertaining to, or regulate in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law.

(B) This shall not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm. ...

(c)(1) Notwithstanding subsection (b) of this section, the governing body of a local unit of government, following the proclamation by the Governor of a state of emergency, may enact an emergency ordinance regulating the transfer, transportation, or carrying of firearms or components of firearms.

(2) Such emergency ordinance shall not be effective for a period of more than twenty (20)

days and shall be enacted by a two-thirds (2/3) majority of the governing body.

## **Chapter 54. Powers of Municipalities Generally**

**14-54-1411. Firearms and ammunition.**  
[Same as § 14-16-504, above.]

**[Current through 2001 Regular Session,  
including 2001 Ark. Acts 592 (SB 492), 1181  
(HB 2192), 1429 (HB 2507) & 1430 (HB 2543)]**

# **CALIFORNIA CAL. CODE**

## **California Penal Code**

### **Part I. Of Crimes and Punishment**

#### **Title 11. Of Crimes Against the Public Peace**

##### **417.2. Imitation Firearms**

(a) Any person who, for commercial purposes, purchases, sells, manufactures, ships, transports, distributes, or receives, by mail order or in any other manner, an imitation firearm except as permitted by this section shall be liable for a civil fine in an action brought by the city attorney of the city or the district attorney of the county of not more than ten thousand dollars (\$10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is permitted if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

(1) Solely for export in interstate or foreign commerce.

(2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.

(3) For use in a certified or regulated athletic event or competition.

(4) For use in military or civil defense activities.

(5) For public displays authorized by public or private schools.

(c) As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(d) As used in this section, "imitation firearm" does not include any of the following:

(1) A nonfiring collector's replica of an antique firearm that was designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A nonfiring collector's replica of a firearm that was designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization, and is offered for sale in conjunction with a wall plaque or presentation case.

(3) A device, as defined in subdivision (g) of Section 12001.

(4) An imitation firearm where the coloration of the entire exterior surface of the device is bright orange or bright green, either singly or in combination.

(5) An instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO2 pressure, or spring action, or a spot marker gun.

## **Title 15. Miscellaneous Crimes**

### **Chapter 1. Schools**

#### **626.9. Possession of firearm in school zone or on grounds of public or private university or college; Exceptions.**

(a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to subdivision (b), (d), (e), or (h) of Section 12027.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in Section 12001.

(3) "Locked container" has the same meaning as that term is given in subdivision (c) of Section 12026.1.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 12025 and 12026.1.

(f)(1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment in the state prison for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment in the state prison for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by Chapter 1 (commencing with Section 12000) of Title 2 of Part 4.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 12025.

(B) By imprisonment in a county jail for not more than one year or by imprisonment in the state prison for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment in the state prison for three, five, or seven years.

(g)(1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for not less than three months, or if